

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAM P. GRESS,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	Judge
DRFIRST.COM, INC., and JOHN DOES 1-10,)	
)	Magistrate
Defendants.)	

NOTICE OF REMOVAL

Defendant, Dr.First.com, Inc., by its attorney, Donald L.F. Metzger, pursuant to 28 U.S.C. § 1446, files and hereby submits this Notice of Removal to the United States District Court for the Northern District of Illinois, Eastern Division, in accordance with 28 U.S.C. §§ 1331, 1367, and 1441, of the case captioned as above, pending in the Circuit Court of Cook County, Illinois, as docket number 09 CH 31937. In support of the petition of this Notice of Removal, and as grounds for removal, defendant states as follows:

1. On or about September 3, 2009, plaintiff, William P. Gress, filed a class action complaint in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, captioned *William P. Gress v. DrFirst.com, Inc., and John Does 1-10*, docket number 09 CH 31937. Attached as Exhibit A to this Notice is a copy of the class action complaint filed and summons issued in that case. The Circuit Court of Cook County, Illinois is located in Chicago, Illinois, within the district and division of this district court.

2. No proceedings have occurred in the case in the Circuit Court of Cook County as of the filing of this Notice.

3. On September 30, 2009, an unknown person left outside the residence of the

registered agent of defendant a copy of the complaint and summons attached as Exhibit A.

4. The class action complaint asserts three causes of action against the defendant based on the alleged transmission by or on behalf of the defendant to the plaintiff of an allegedly unsolicited fax advertisement. Count I asserts a claim under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”), for the violation of that act. Count II asserts a claim under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 (the “ICFA”), for the violation of that act. Count III asserts a claim under Illinois common law for conversion. The plaintiff asserts these claims on behalf of a class of persons.

5. The state court case is a civil action of which this district court has original jurisdiction under the provisions of 28 U.S.C. § 1331 for civil actions arising under the laws of the United States, as to the cause of action in Count I under 47 U.S.C. § 227.

6. Removal to this district court is authorized by 28 U.S.C. § 1441. The Seventh Circuit Court of Appeals has held that TCPA actions are removable under 28 U.S.C. § 1441 because a claim pursuant to the TCPA arises under federal law. *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449-51 (7th Cir. 2005).

7. This district court has supplemental jurisdiction under the provisions of 28 U.S.C. § 1367 over the ICFA and conversion claims because those claims form part of the same case or controversy as the alleged TCPA violation. The claims do not raise novel or complex issues of Illinois law, and do not predominate over the federal TCPA claim.

8. This district court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1441(c).

9. There are no defendants other than DrFirst.com, Inc., named in this action.

10. At the time of the filing of this Notice of Removal to this district court, no

processes, pleadings, or orders, other than the documents attached as Exhibit A and described above, have been received by the defendant. There is no indication that plaintiff has requested a trial by jury.

11. This Notice of Removal is timely, in accordance with 28 U.S.C. § 1446(b), as it is filed within 30 days after the registered agent of the defendant was left a copy of the summons and complaint, which sets forth the claims upon which this Notice of Removal is based.

12. Written notice of this Notice of Removal is being served upon plaintiff, and a copy of the Notice of Removal is being filed with the Circuit Court of Cook County, Illinois, County Department, Chancery Division.

WHEREFORE, DrFirst.com, Inc., for the foregoing reasons, petitions and gives notice that the above-entitled action be removed from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, to the United States District Court for the Northern District of Illinois, Eastern Division.

/s/ Donald L.F. Metzger
Attorney for DrFirst.com, Inc.

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